United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 375, AFL–CIO (H. C. Price Construction Co.) *and* David C. Vonder Haar. Case 19–CB–8032

December 30, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On July 30, 1998, Administrative Law Judge Clifford H. Anderson issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.[1]

The judge found that the Respondent Union violated Section 8(b)(1)(A) and (2) of the Act by failing, between November 1996 and January 1997, to refer Charging Party David Vonder Haar to jobs from the Respondent's exclusive hiring hall. The judge reached that conclusion even though, as he also found, the Union did not act maliciously or even negligently. He found, instead, that James Laiti, the Union's dispatcher, had, through no fault of Vonder Haar, formed the good faith but mistaken belief that Vonder Haar actually did not want to work during that period, even though he had signed the referral register in October 1996.[2]

The judge noted that the Board had consistently found that, when a union fails to refer an applicant for employment in the proper order from an exclusive hiring hall, it violates its duty of fair representation and Section 8(b)(1)(A) and (2) unless its actions are justified by a lawful union-security clause or are necessary to the efficient operation of the hiring hall. See, e.g., *Iron Workers Local 118 (California Erectors)*, 309 NLRB 808 (1992). Applying what he characterized as the Board's "strict liability" standard to the facts of this case, the judge found that the Union's failure to refer Vonder Haar in the proper order was unlawful.

After the judge issued his decision, the Board issued its decision in *Steamfitters Local 342 (Contra Costa Electric)*, 329 NLRB 688 (1999). In that case, the Board overruled *California Erectors* and other decisions holding that a union's mere negligence in its failure to dispatch an applicant in the proper order from an exclusive hiring hall violates the duty of fair representation.[3] The Board also held that mere negligence in failing to follow hiring hall procedures does not violate Section 8(b)(1)(A) and (2) independent of the duty of fair representation, because simple mistakes do not carry the coercive message that hiring hall users had better support the union if they expect to be treated fairly in job referrals. Accordingly, the Board dismissed the allegation that the union had acted unlawfully by mere negligence in failing to refer an applicant for employment from its hiring hall.

We find that *Contra Costa Electric* applies in the context of this case. As noted above, the judge found that the Union's failure to refer Vonder Haar was not motivated by malice toward him and, indeed, was not even negligent, but rather resulted from Laiti's mistaken but good-faith belief that Vonder Haar did not want to work during the period in question. Neither the General Counsel nor the Charging Party has excepted to these findings. Accordingly, consistent with *Contra Costa Electric*, we find, contrary to the judge, that Laiti's failure to refer Vonder Haar did not breach the Respondent's duty of fair representation or violate Section 8(b)(1)(A) and (2).[4]

ORDER

The National Labor Relations Board orders that the Respondent, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 375, AFL–CIO, Fairbanks, Alaska, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to allow hiring hall users to inspect hiring hall records.

(b) Threatening to deny referrals to any hiring hall user because he or she complains of a failure to refer him or her to employment and/or because he or she has asked to inspect the hiring hall records.

[1] The Respondent has requested oral argument. The request is denied as the record, exceptions, and brief adequately present the issues and the positions of the parties.

[2] In fact, Vonder Haar had told Laiti that he did not want to work. However, the judge found that he did so in May or June 1996, rather than in October of that year, as Laiti recalled.

[3] The Board relied on *Steelworkers v. Rawson*, 495 U.S. 362 (1990), in which the Supreme Court held that mere negligence, even in the enforcement of a collective-bargaining agreement, does not breach a union's duty of fair representation. The Board also relied on *Air Line Pilots Assn. v. O'Neill*, 499 U.S. 65 (1991), in which the Court noted that the duty of fair representation applies to the operation of hiring halls, and held that the same test for determining whether the duty has been breached—i.e., whether the union's conduct was "arbitrary, discriminatory, or in bad faith"—applies to all union activity. The Board read those decisions together as foreclosing a finding that negligence in the operation of a hiring hall constitutes a breach of the duty. The Board further noted that in so holding, it was acting consistently with its decisions finding that mere negligence in other union conduct (e.g., grievance processing) does not breach the duty of fair representation, and also with its early decisions applying the duty of fair representation to the operation of hiring halls.

[4] We adopt, for the reasons stated by the judge, his finding that the Union at a later date violated Sec. 8(b)(1)(A) by refusing to permit Vonder Haar to examine hiring hall records. The judge additionally found that in response to Vonder Haar's request, Wingfield unlawfully threatened to withhold future referrals from Vonder Haar, and the Union has not excepted to that finding.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide David C. Vonder Haar reasonable time and opportunity to inspect any and all hiring hall records that will enable him to determine whether he has been properly treated under hiring hall rules and regulations.

(b) Within 14 days after service by the Region, post at its Fairbanks, Alaska offices and hiring halls copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO MEMBERS AND HIRING HALL USERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to allow hiring hall users to inspect hiring hall records.

WE WILL NOT threaten to deny referrals to any hiring hall user because he or she complains of a failure to refer him or her to employment and/or because he or she has asked to inspect our hiring hall records.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide David Vonder Haar reasonable time and opportunity to inspect any and all hiring hall records that will enable him to determine whether he has been properly treated under hiring hall rules and regulations.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 375, AFL–CIO

Patrick Dunham, Esq., for the General Counsel.
Arthur Lyle Robson, Esq., of Fairbanks, Alaska, for the Respondent.
David Vonder Haar, of Fairbanks, Alaska, pro se.

DECISION

STATEMENT OF THE CASE

CLIFFORD H. ANDERSON, Administrative Law Judge. I heard this case in trial in Fairbanks, Alaska, on January 27 and 28, 1998, pursuant to a complaint and notice of hearing issued by the Regional Director for Region 19 of the National Labor Relations Board on September 2, 1997, based on a charge in Case 19–CA–8032 filed on February 18, 1997, by David Vonder Haar, an individual (sometimes the Charging Party) against United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 375, AFL–CIO[1] (the Union or the Respondent).

The complaint alleges that the Respondent violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act) by failing to provide the Charging Party with access to hiring hall records and by threatening him with the loss of future employment, because the Charging Party was protesting the Union's failure to refer him to employment and its refusal to allow him access to hiring hall records. The complaint further alleges that the Respondent violated Section 8(b)(1)(A) and (2) of the Act by refusing to refer the Charging Party to employment through its hiring hall during the period November 18, 1996, to February 3, 1997. The Respondent denies that it has violated the Act.

FINDINGS OF FACT

On the entire record[2] herein including briefs from the Respondent and the General Counsel, I make the following findings of fact.[3]

I. JURISDICTION

H. C. Price Construction Co. is a State of Alaska corporation with an office and place of business in Anchorage, Alaska, where it is engaged in the construction business. During its business operations H. C. Price Construction Co. has annually purchased and received directly from points outside the State of Alaska, or from suppliers within the State which in turn ob-

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[1] The Respondent's name appears as corrected in its answer.

[2] The General Counsel's motion to correct transcript is granted.

[3] As a result of the pleadings and the stipulations of counsel at the trial, there were few disputes of fact regarding collateral matters. Where not otherwise noted, the findings herein are based on the pleadings, the stipulations of counsel, or unchallenged credible evidence.

tained such goods from outside the State, goods, and services valued in excess of $50,000 and in the same periods has sold and shipped goods and services valued in excess of $50,000 from its facility to points outside the State of Alaska, or to customers within the State, which customers themselves were engaged in interstate commerce by other than indirect means.

Based on the above, there is no dispute and I find that H. C. Price Construction Co. is and has been at all times material an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Union is an affiliated local of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO and has long represented employees in northern Alaska in the plumbing and pipefitting trades. As part of its representation of employees, the Union negotiates and signs collective-bargaining agreements with employers, including H. C. Price Construction Co., and operates an exclusive hiring hall for plumbers and pipefitters in Fairbanks, Alaska. As part of the operation of its hiring hall, the Union maintains a written Fairbanks Hiring Hall Agreement which is by its terms a compilation of hiring rules, regulations and procedures followed by the Union in the operation of its hiring hall.

The Fairbanks Hiring Hall Agreement asserts in selected parts:

Section 5. Hiring Hall Method of Operation

> The hiring hall shall be open on a rotational basis to all applicants who have demonstrated their competence and skill. . . . The hiring hall shall be nondiscriminatory. . . . It shall be the burden of the union to establish that denial of access to the hiring hall established hereby is based on grounds consistent with the provisions of Section 8(b)(1)(A) and Section 8(b)(2) of the National Labor Relations Act.

Section 7. Reregistration of Availability

> Applicants for registration shall be required to (a) sign the hiring hall register in order to register and (b) sign again once within each additional period of 90 days. Failure to do so shall result in (a) the applicant's name being removed from the hiring hall register and (b) being placed at the bottom of the appropriate [registration category] when he again attempts to registered his availability for employment.

Section 13. Availability for Work

> A. All applicants must be physically available for work offers within 24 hours after call by the hiring agent without good cause being shown. Failure to be available within the time specified, and without good cause shown, shall be charged against the applicant as a work rejection.

Section 14. Maintenance and Loss of Position o[n] the Hiring Register

> C. Any applicant may reject offers of suitable work made to him by the hiring agent but this shall be a work rejection.

Section 16. Rejection

> Any applicant accumulating three work rejections and not accepting employment from the hiring hall register within a single ninety (90) day period (from sign up to removal) may be moved to the bottom of the hiring hall register.

There is no dispute that the hiring hall was operated at all material times in a flexible manner. Thus individuals who were unavailable for work for set periods such as during a trip or vacation or who limited the jobs they sought or rejected work were allowed to remain on the list without being "moved to the bottom of the hiring hall register."

The Union's business manager is J. C. Wingfield and its hiring hall Dispatcher is James Laiti. These individuals were undisputed agents of the Respondent. David Vonder Haar has been a journeyman pipefitter for many years utilizing the Union's Fairbanks hiring hall.

B. Events

David Vonder Haar's brother died on April 2, 1996. There is no dispute that Vonder Haar had a close relationship with his brother and was upset by his death. Although registered on the Respondent's hiring hall out-of-work list, Vonder Haar told Jim Laiti sometime in May or June 1996 to forgo dispatching him. More specifically, in Vonder Haar's recollection, he told Laiti: "I'm not ready. My head is just not into it." Thereafter he told Laiti he was ready to be dispatched and was in consequence dispatched to a position with Price in August 1996 at a remote site in Healy, Alaska.

During Vonder Haar's employment with Price while on regular rest and rehabilitation leave, he testified he became ill with the flu and was late in returning to work. Thereafter in October he was informed that he needed to be physically present in Fairbanks to handle certain legal affairs regarding his brother's estate. When a leave was not granted, he resigned his employment while preserving his eligibility to return on a new dispatch and left the job on or about October 24, 1996. Price's supervisorial dealings with Vonder Haar in these regards were also made known to an extent to union agents on the job and were communicated again to an extent to union officials at the Fairbanks office. It may be fairly said from the testimony respecting this chain of events taken as a whole that James Laiti came to believe from these communications that Vonder Haar's despond respecting his brother continued.

Following his departure from the Price job, Vonder Haar returned to Fairbanks, concluded his legal obligations concerning his brother's estate and then visited the hiring hall in Fairbanks on October 28, 1996. He testified that at the hall he signed the out-of-work list and had a conversation with the Union's business manager, J. C. Wingfield. Vonder Haar testified that he told Wingfield that he was qualified for and would accept instrumentation work—a specialized dispatch requiring specialized skills and experience—asserting to Wingfield: "I'm ready to go back to work." Vonder Haar testified he asked Wingfield about the reason that he had to resign his Price position rather than receive time off from the Company to return to Fairbanks

to conduct his business. Wingfield in Vonder Haar's memory told him to simply sign the book and when work was available he would be notified. He recalled that Wingfield became defensive about his questions respecting the Price work asserting in some heat that he had nothing to do with the Price decision. Wingfield did not address this specific conversation in his testimony.

James Laiti testified that at or about the time of Vonder Haar's October 28, 1996 registration on the out-of-work list, he had a conversation, likely by phone, with Vonder Haar in which Vonder Haar said he could not go to work that "my head's not into it"—essentially a reprise of the conversation testified to by Vonder Haar but located by him on an earlier occasion.

Vonder Haar signed the book on October 28, 1996, and waited for a dispatch. He testified that from time to time he would call the hall and speak to either James Laiti or the Respondent's longtime secretary Sylvia Aversa inquiring about work generally and receiving general replies. Aversa testified that had she received such a call from Vonder Haar during this period, she would not have commented on the availability of dispatch opportunities for she, without exception, let either Laiti or Wingfield discuss those matters with hiring hall registrants.

James Laiti testified that, based on Vonder Haar's statements to him and from what he had heard respecting Vonder Haar's circumstances at the Price job in October, he believed that Vonder Haar did not in fact want to return immediately to work and therefore did not immediately dispatch him to work. In early November, however, Laiti testified he had a substantial employer request for workers which normally would have caused him to contact all those on the list about the work. He recalled he called and left messages for all on the list on that occasion without a specific recollection of his actions regarding Vonder Haar.

There is no dispute that Vonder Haar did not receive a dispatch from October 28 until the events of late January as discussed, infra. There is also no dispute that during that period Vonder Haar in the normal course would have received dispatches based on his October 28, 1996 place on the out-of-work list during that period.

Vonder Haar came to the Union's hiring hall in late January and spoke initially to secretary Aversa. He asked her to see the books and was referred by her to Laiti. She testified that all users of the hiring hall could inspect the hiring hall registration sheets but that a flat space or work area was needed and she referred such requests to Laiti so that a means of inspection could be afforded the requesting registrant.

Laiti, in Vonder Haar's recollection, came to the window and asked him why he wanted to see the books to which Vonder Haar replied he wanted to determine if he had been bypassed. Vonder Haar continued:

> Q. Okay. And what did Mr. Laiti say to you?
>
> A. Well, he looked startled by what I'd said, and he says, I thought you were waiting for an instrumentation job.
>
> Q. And did you respond to that?
>
> A. Yes. I told him that—I indicated that I would like to work on instrumentation, because I had the experience as an electronic technician, but that I'd signed the dispatch in the anticipation of taking any job, and that I specifically said I wanted to go back to Healy.
>
> Q. Was there any more to the conversation?
>
> A. No. Jimmy says, well, I didn't think you wanted to work, and at that point in time, J. C. [Wingfield] came in.

Vonder Haar testified that Wingfield asked why Vonder Haar was there and Laiti told him that Vonder Haar wanted to see the books. At this Wingfield took umbrage and in some heat recounted things the Union had done for Vonder Haar, that Vonder Haar was ungrateful, that he Wingfield had a note in his log that Vonder Haar did not want work. When Vonder Haar asked to see that log entry, Wingfield became enraged and stood up indicating in coarse language he did not have to show Vonder Haar anything and generally challenging Vonder Haar asserting, inter alia, in Vonder Haar's memory: "[Y]ou'll never work out of this hall again."

Vonder Haar testified the conversation continued with Laiti asserting: "from what I remember, he says, you never wanted to work anyway." Vonder Haar demurred and said he wanted to return to the Price job in Healy. The conversation between the three continued. Wingfield still upset told Vonder Haar: "you want to go back to Healy, he says, I'll send your goddamn ass back there today." Vonder Haar left the hall at this point, but was telephoned by Haiti later that day and received and accepted a dispatch to Healy.

Wingfield testified that in late January Vonder Haar came into the hall. Wingfield inquired of the reason for Vonder Haar's visit and was told by Laiti that Vonder Haar was questioning the hiring hall procedures. Wingfield conceded that, being upset with any challenge to the hiring hall's operation and the honesty of his colleagues Laiti and Aversa, he "exploded on him that day." Wingfield denied however either threatening Vonder Haar with loss of future employment or threatening him with retaliation for his actions in complaining about the failure to dispatch him. Rather Wingfield testified that when he learned that Vonder Haar wanted to go back to the Price-Healy job, he offered to dispatch Vonder Haar back to the job immediately and when Vonder Haar did not respond to that offer and left the hall, he told Laiti to be sure to call Vonder Haar later that day with the Price-Healy job dispatch offer. There is no dispute that the same evening the job offer was communicated to Vonder Haar by phone, Vonder Haar accepted the dispatch and the job placement was made with Vonder Haar commencing employment at Price on or about February 3, 1997.

C. Analysis and Conclusions

1. The failure to dispatch allegation—Paragraph 5 of the complaint

a. Threshold arguments rejected on credibility grounds[4]

The General Counsel argued that the Union willfully refused Vonder Haar a dispatch at a time he would otherwise have received one because of the union agents' hostility to him predicated on Vonder Haar's earlier refusal to sign forms allowing a portion of his wages to be deducted and remitted to a union

[4] The resolutions in this section of this decision are based on the probabilities of events and the entire record but are primarily driven by the credibility of the witnesses during the relevant portions of their testimony. I do not believe that any witness in this proceeding was consciously lying. I found however that recollections respecting these events seemingly varied widely in their accuracy.

associated political fund. Without belaboring the issue, I simply find there is insufficient evidence to support the assertion. Other witnesses testified credibly that they too had from time to time declined to have such payments deducted from their wages without adverse impact. Following the incident in issue the union dispatched Vonder Haar and assisted him in other matters. Finally, the accused agents of the Respondent credibly denied that the refusal to contribute to the fund was a factor in the failure to dispatch Vonder Haar during the events in question.

To the extent that Vonder Haar supports this animus argument with testimony that he telephoned the hall in November and December and spoke with the hiring hall secretary, Aversa, I discredit his testimony and credit the different version of Aversa regarding these events. She credibly testified that she never discussed work availability with hiring hall users and would always suggest that the users talk to either Laiti or Wingfield respecting such matters. So, too, I do not rely on Vonder Haar's testimony that he spoke to Laiti sometime in January about work and was told none was immediately available. The date of the call was not established and the call itself was not definitive respecting either Vonder Haar's desire to go to work or that there was in fact work available.

The Union argued that Vonder Haar specifically asked the Union not to dispatch him during the period after his October registration and, further, that Vonder Haar was notified by telephone message on his answering machine of job opportunities after his October out-of-work registration and failed to respond to those messages. I credit Vonder Haar's denial of these assertions over Laiti's contrary assertions. Vonder Haar's denials were far more certain and convincing in this regard that Laiti's vague and tentative recitation.

I also discredit the testimony of James Laiti respecting his identification of the timing of his critical conversation with Vonder Haar, wherein Vonder Haar specifically indicated he did not want to work. Laiti suggested such a conversation occurred in October 1996. I credit Vonder Haar that such a conversation with Laiti occurred months earlier before he was dispatched to the Price job in August 1996 but did not occur after that time. Laiti's memory respecting the timing of the conversation was less than crystal clear. Further, his testimony on the matter was not consistent and also suggested the conversation had occurred in the summer months.

b. Resolution of the factual question of what occurred

Considering the record as a whole and the credibility resolutions described above, I find and conclude that Union agent James Laiti came to believe that David Vonder Haar was not able or willing to accept dispatches even though he registered on the out-of-work list in October 1996 and, in consequence, Laiti did not dispatch Vonder Haar even though he was otherwise eligible for dispatch during the November 1997—January 1997 period.

I find further that Laiti formed this impression from Vonder Haar's pre-October conversations with Laiti as well as Vonder Haar's circumstances in leaving the Price job in October to the extent those circumstances were reported to Laiti and the Union in Fairbanks by Price based individuals. Importantly, I find that Laiti's impression was based on pre-October events and reports of Vonder Haar's October job termination and was not based on anything that Vonder Haar told him or the Union on or after he registered on the out-of-work list in October 1996. Finally, I find that Vonder Haar would have accepted a job referral issued by the Union during this period and, in consequence of his not having received such a referral to which he was entitled, he missed a period of work.

c. The law of hiring hall operation

The General Counsel relies on the longstanding principle recently repeated in *Iron Workers Local 118 (California Erectors),* 309 NLRB 808 (1992), that in the operation of a hiring hall, when a union denies a hiring hall registrant work that he or she would otherwise be entitled to, without a justification related to the efficient operation of the hiring hall, it inherently breaches its duty of fair representation to the hiring hall user and violates Section 8(b)(1)(A) and (2) of the Act. This is so because the Board holds that a union operating a hiring hall controls the users' employment opportunities and, therefore, has a fiduciary duty to those users not to wrongfully deny them employment. This strict liability standard means that the government need not show that the union acted negligently or denied a hiring hall user a job opportunity based on invidious or unfair considerations in establishing a violation of Section 8(b)(2) of the Act.

d. Conclusion

On this record I do not find that Laiti and the Union acted out of malice or even acted negligently. I do find, however, that Laiti, and therefore the Union, was mistaken in its good-faith belief that Vonder Haar would not accept work and therefore it was proper to pass him over until he indicated a readiness to resume work. Since I explicitly do not find that Vonder Haar was to blame for the mistaken impression taken by Laiti of Vonder Haar's intentions, the Union may not successfully argue that Vonder Haar was to blame for the mistake. That being so, under the strict liability standard the Board imposes, the Union in passing over Vonder Haar violated Section 8(b)(1)(A) and (2) of the Act and is therefore liable to Vonder Haar for the loss of wages and other benefits of employment he suffered when he was not dispatched to work to which he was entitled under the rules of the hiring hall. I, therefore, sustain this portion of the General Counsel's complaint.

2. The failure to show hiring hall records on request and threat allegations—complaint paragraph 6

In evaluating these allegations, it is necessary to resolve the conflicting versions of the Vonder Haar-Laiti-Wingfield conversation at the hall in late January as described, supra. I credit Vonder Haar's specific recollections over Wingfield and Laiti's incomplete version of events and general denials. Laiti did not testify respecting the details of the entire conversation. Wingfield conceded he was angry and "exploded" on Vonder Haar that day.

There is no dispute that the Union has procedures in place and normally follows those procedures to allow requesting hiring hall users to inspect the hiring hall records. In the instant case there is also no doubt that Vonder Haar made such a request, was initially directed by Aversa to Laiti to fulfill that request, but then events got out of hand. The dispute between Wingfield and Vonder Haar intervened and the records were never offered to or shown to Vonder Haar. I credit Vonder Haar that Wingfield told him in some heat that he did not have to show Vonder Haar any records. Given this finding and the entire context of events, I further find that at least in this one

instance involving Vonder Haar, the Union must be held to have refused to allow inspection of its hiring hall records.

Board law is clear and the parties did not dispute that such records must be shown to hiring hall users on request. *Bartenders & Beverage Dispensers Local 165 (Nevada Resort Assn.),* 261 NLRB 420 (1982). Accordingly, I find that in not disclosing its records to Vonder Haar, the Union violated Section 8(b)(1)(A) of the Act as alleged in the complaint.

I have credited Vonder Haar's testimony that in the middle of a lengthy "explosion" Wingfield told him he would never work out of the hiring hall again. This is a classic violation of Section 8(b)(1)(A) of the Act. This statement by Wingfield, however, was followed immediately afterwards by Wingfield's telling Vonder Haar he could be dispatched back to the Price-Healy job. Indeed that dispatch offer was repeated, accepted and consummated later that day in Vonder Haar's recollection. In such a setting a threat to deny an individual the use of the hiring hall may be regarded as either retracted, remedied, or at least ameliorated by the immediately following contrary action—the offer of an immediate dispatch through the hall.

I do not find the entire context of events sufficiently benign to find the threat violation of the Act remedied by Wingfield's subsequent actions. First, of course, Wingfield never explicitly withdrew his threat. Further, the earlier period during which Vonder Haar was asserting he had been denied a dispatch—and respecting which I have found a violation of law—was not resolved in this conversation. Nor had Wingfield retracted his refusal to open the books—a refusal I have found a violation of the Act herein. In such a context where there were unremedied unfair labor practices, Wingfield's threat that Vonder Haar would not work out of the hall again would not have reasonably been regarded as entirely withdrawn by the subsequent dispatch offer. Thus, the violation was not and has not been remedied by the Union. Accordingly, I find the Union violated Section 8(b)(1)(A) of the Act by threatening to deny Vonder Haar future use of the hiring hall as alleged in the complaint.

REMEDY

Having found the Union has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act including the posting of a remedial notice consistent with the Board's decision in *Indian Hills Care Centers*, 321 NLRB 87 (1996).

Although there was no dispute that Vonder Haar was passed over for certain work, it is not appropriate in an unfair labor practice proceeding to identify the particular job or jobs lost by a discriminatee. *Electrical Workers IBEW Local 6 (San Francisco Electrical Contractors*), 318 NLRB 109, 142 (1995). Accordingly, I shall direct the Respondent to make Vonder Haar whole, with interest, for the loss of job opportunities from November 1996 through January 1997, as identified in the compliance stage of these proceedings, caused by the Respondents violation of Section 8(b)(2) of the Act as found herein. Such make-whole remedy shall include payment to Vonder Haar and the contractual fringe trusts for all loss of wages and benefits and contractual fringe benefits, plus appropriate late trust payment penalties as provided by the collective-bargaining agreement, which would have been paid for the employment lost as a result of the Respondent's unfair labor practices.

Backpay shall be calculated in the manner set forth in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987); see also *Florida Steel Corp*., 231 NLRB 651 (1977), and *Isis Plumbing Co*., 138 NLRB 716 (1962). Contractual payments shall be made consistent with *Merryweather Optical Co*., 224 NLRB 1213 (1976).

CONCLUSIONS OF LAW

1. H. C. Price Construction Co. is and has been at all times material an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent is and has been at all relevant times, a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(b)(1)(A) of the Act by:

(a) Refusing to allow a hiring hall user to inspect its hiring hall books.

(b) Threatening to deny a hiring hall user the use of the hiring hall because the hiring hall user complained of a failure to refer him to employment and because the Union had refused to allow inspection of its hiring hall books.

4. The Respondent violated Section 8(b)(1)(A) and (2) of the Act by failing and refusing to dispatch David Vonder Haar to employment to which he was entitled under the rules and regulations of its hiring hall.

5. The unfair labor practices described above are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]